

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(As read a first time)

FREEDOM OF INFORMATION BILL 1981

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SCHEDULE

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented pursuant to leave granted and read 1^o, 2 April 1981)

(ATTORNEY-GENERAL, SENATOR DURACK)

No 63

A BILL

FOR

**An Act to give to members of the public rights of access to
official documents of the Government of the Commonwealth
and of its agencies**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Freedom of Information Act* 1981.

Commencement

2. The several Parts of this Act shall come into operation on such respective dates as are fixed by Proclamation.

Object

3. (1) The object of this Act is to extend the right of the Australian community to access to official information in the possession of the Government of the Commonwealth by—

(a) making available to the public information about the operations of departments and public authorities and, in particular, ensuring that

rules and practices affecting members of the public in their dealings with departments and public authorities are readily available to persons affected by those rules and practices; and

- (b) creating a general right of access to official information in documentary form in the possession of Ministers, departments and public authorities, limited only by what is necessary to maintain the confidentiality necessary— 5
- (i) for the protection of essential public interests, and the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities; and 10
 - (ii) for the proper conduct of public business by Ministers, departments and public authorities.

(2) It is the intention of the Parliament that the provisions of this Act shall be interpreted so as to further the object set out in sub-section (1) and that any discretions conferred by this Act shall be exercised as far as possible so as to facilitate and promote the disclosure of information. 15

Interpretation

4. (1) In this Act, unless the contrary intention appears—

“agency” means a Department or a prescribed authority;

“applicant” means a person who has made a request; 20

“Department” means a Department of the Australian Public Service other than the Department of the Senate, the Department of the House of Representatives, the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff and the Joint House Department; 25

“document” includes any written or printed matter, any map, plan or photograph, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid of some other device, of being reproduced from the article or thing, and includes a copy of any such matter, map, plan, photograph, article or thing, but does not include library material maintained for reference purposes; 30

“document of an agency” or “document of the agency” means a document in the possession of an agency, or in the possession of the agency concerned, as the case requires, whether created in the agency or received in the agency; 35

“enactment” means—

(a) an Act;

(b) an Ordinance of the Australian Capital Territory; or

(c) an instrument (including rules, regulations or by-laws) made under an Act or under such an Ordinance; 40

“exempt document” means—

- (a) a document which, by virtue of a provision of Part IV, is an exempt document;
- (b) a document in respect of which, by virtue of section 6 or regulations made in accordance with that section, an agency is exempt from the operation of this Act; or
- (c) an official document of a Minister that contains some matter that does not relate to the affairs of an agency or of a Department of State;

“exempt matter” means matter the inclusion of which in a document causes the document to be an exempt document;

“officer”, in relation to an agency, includes a member of the agency or a member of the staff of the agency;

“official document of a Minister” or “official document of the Minister” means a document in the possession of a Minister, or in the possession of the Minister concerned, as the case requires, that relates to the affairs of an agency or of a Department of State and, for the purposes of this definition, a Minister shall be deemed to be in possession of a document that has passed from his possession if he is entitled to access to the document and the document is not a document of an agency;

“Ombudsman” means the Commonwealth Ombudsman;

“Ordinance”, in relation to the Australian Capital Territory, includes a law of a State that applies, or the provisions of a law of a State that apply, in the Territory by virtue of an enactment;

“prescribed authority” means—

- (a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of, an enactment, other than—
 - (i) an incorporated company or association;
 - (ii) a body that, under sub-section (2), is not to be taken to be a prescribed authority for the purposes of this Act;
 - (iii) the Australian Capital Territory House of Assembly;
 - (iv) the Legislative Assembly of the Northern Territory or the Executive Council of the Northern Territory; or
 - (v) a Royal Commission;
- (b) any other body, whether incorporated or unincorporated, declared by the regulations to be a prescribed authority for the purposes of this Act, being—
 - (i) a body established by the Governor-General or by a Minister; or
 - (ii) an incorporated company or association over which the Commonwealth is in a position to exercise control;

- (c) subject to sub-section (3), the person holding, or performing the duties of, an office established by an enactment; or
- (d) the person holding, or performing the duties of, an appointment declared by the regulations to be an appointment the holder of which is a prescribed authority for the purposes of this Act, being an appointment made by the Governor-General, or by a Minister, otherwise than under an enactment,

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but does not include—

- (e) a body, whether incorporated or unincorporated, established by, or in accordance with the provisions of, an enactment providing for the government of an external Territory; or
- (f) a person holding, or performing the duties of, an office established by an enactment referred to in paragraph (e);

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“principal officer” means—

- (a) in relation to a Department—the person holding, or performing the duties, of the office of Permanent Head of the Department; and
- (b) in relation to a prescribed authority—
 - (i) if the regulations declare an office to be the principal office in respect of the authority—the person holding, or performing the duties of, that office; or
 - (ii) in any other case—the person who constitutes that authority or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which he is present;

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“request” means a request made in accordance with sub-section 14 (1);

“responsible Minister” means—

- (a) in relation to a Department—the Minister administering the relevant Department of State;
- (b) in relation to a prescribed authority referred to in paragraph (a) of the definition of “prescribed authority”—the Minister administering the enactment by which, or in accordance with the provisions of which, the prescribed authority is established;
- (c) in relation to a prescribed authority referred to in paragraph (c) of that definition—the Minister administering the enactment by which the office is established; or
- (d) in relation to any other prescribed authority—the Minister declared by the regulations to be the responsible Minister in respect of that authority,

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or another Minister acting for and on behalf of that Minister;

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“Tribunal” means the Administrative Appeals Tribunal.

(2) An unincorporated body, being a board, council, committee, sub-committee or other body established by, or in accordance with the provisions

of, an enactment for the purpose of assisting, or performing functions connected with, a prescribed authority shall not be taken to be a prescribed authority for the purposes of this Act, but shall be deemed to be comprised within that prescribed authority.

- 5 **(3) A person shall not be taken to be a prescribed authority—**
- (a) by virtue of his holding an office of member of the Australian Capital Territory House of Assembly, member of the Legislative Assembly of the Northern Territory or Administrator or Minister of the Northern Territory; or
 - 10 (b) by virtue of his holding, or performing the duties of—
 - (i) a prescribed office;
 - (ii) an office the duties of which he performs as duties of his employment as an officer of a Department or as an officer of or under a prescribed authority;
 - 15 (iii) an office of member of a body; or
 - (iv) an office established by an enactment for the purposes of a prescribed authority.

(4) For the purposes of this Act, the Department of Defence shall be deemed to include—

- 20 (a) the Defence Force;
- (b) the Australian Cadet Corps;
 - (c) the Naval Reserve Cadets; and
 - (d) the Air Training Corps.

Act not to apply to courts and certain tribunals

- 25 **5. For the purposes of this Act—**
- (a) a court, or the holder of a judicial office or other office pertaining to a court in his capacity as the holder of that office, is not to be taken to be a prescribed authority or to be included in a Department;
 - 30 (b) a registry or other office of a court, and the staff of such a registry or other office in their capacity as members of that staff, shall not be taken to be part of a Department;
 - (c) a tribunal, authority or body specified in this paragraph, or the holder of an office pertaining to such a tribunal, authority or body in his capacity as the holder of that office, shall not be taken to be a prescribed authority or to be included in a Department, namely:
 - 35 (i) the Australian Conciliation and Arbitration Commission;
 - (ii) the Industrial Registrar or a Deputy Industrial Registrar;
 - (iii) the Flight Crew Officers Industrial Tribunal;
 - 40 (iv) the Public Service Arbitrator or a Deputy Public Service Arbitrator; and

- (v) the Coal Industry Tribunal or any other Tribunal, authority or body appointed in accordance with Part V of the *Coal Industry Act 1946*; and
- (d) a registry or other office of, or under the charge of, a tribunal, authority or body referred to in paragraph (c), and the staff of such a registry or other office in their capacity as members of that staff, shall not be taken to be part of a Department. 5

Exemption of certain bodies

6. (1) The bodies specified in Part I of the Schedule, and the person holding and performing the duties of the office specified in that Part, are to be deemed not to be prescribed authorities for the purposes of this Act. 10

(2) The bodies and Departments specified in Part II of the Schedule are exempt from the operation of this Act in relation to the documents referred to in that Schedule in relation to them.

(3) In Part II of the Schedule, “competitive commercial activities” means activities carried on on a commercial basis in competition with persons other than governments or authorities of governments. 15

(4) In Part II of the Schedule, a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities. 20

(5) The regulations may provide that—

- (a) a specified body is to be deemed not to be a prescribed authority for the purposes of this Act;
- (b) a body specified in accordance with paragraph (a) is, or is not, to be taken to be included in a specified agency; or 25
- (c) a specified agency is to be exempt from the operation of this Act in respect of documents relating to specified functions or activities of the agency or in respect of documents of any other prescribed description.

PART II—PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION 30

Publication of information concerning functions and documents of agencies

7 (1) The responsible Minister of an agency shall—

- (a) cause to be published, as soon as practicable after the commencement of this Part but not later than 12 months after that commencement, in a form approved by the Minister administering this Act— 35
- (i) a statement setting out particulars of the organization and functions of the agency, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions and particulars of 40

any arrangement that exists for consultation with, or representations by, bodies and persons outside the Commonwealth administration in relation to the formulation of policy in, or the administration of, the agency;

5 (ii) a statement of the categories of documents that are maintained in the possession of the agency; and

(iii) a statement of any information that needs to be available to the public concerning particular procedures of the agency in relation to Part III, and particulars of the officer or officers to whom, and the place or places at which, initial inquiries concerning access to documents may be directed; and

10 (b) during the year commencing on 1 January next following the publication, in respect of the agency, of the statement under sub-paragraph (a) (i), (ii) or (iii) that is the first statement published under that sub-paragraph, and during each succeeding year, cause to be published statements bringing up to date the information contained in the previous statement or statements published under that sub-paragraph.

15 (2) In approving a form under sub-section (1), the Minister shall have regard, amongst other things, to the need to assist members of the public to exercise effectively their rights under this Act.

20 (3) The information to be published in accordance with this section may be published by including it in the publication known as the Commonwealth Government Directory.

25 (4) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

30 (5) Sub-section (1) applies in relation to an agency that comes into existence after the commencement of this Part as if the references in that sub-section to the commencement of this Part were references to the day on which the agency comes into existence.

Certain documents to be available for inspection and purchase

35 8. (1) This section applies, in respect of an agency, to documents that are provided by the agency for the use of, or are used by, the agency or its officers in making decisions or recommendations, under or for the purposes of an enactment or scheme administered by the agency, with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to which persons are or may be entitled or subject, being—

40 (a) manuals or other documents containing interpretations, rules, guidelines, practices or precedents; or

(b) documents containing particulars of such a scheme, not being particulars contained in an enactment as published apart from this Act,

but not including documents that are available to the public as published otherwise than by an agency or as published by another agency.

(2) The principal officer of an agency shall—

(a) cause copies of all documents to which this section applies in respect of the agency that are in use from time to time to be made available for inspection and for purchase by members of the public;

(b) not later than 12 months after the commencement of this Part, cause to be published in the *Gazette* a statement (which may take the form of an index) specifying the documents of which copies are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and 5

(c) during the year commencing on 1 January next following the publication of the statement under paragraph (b) and during each succeeding year, cause to be published in the *Gazette* statements bringing up to date the information contained in the previous statement or statements. 10

(3) The principal officer is not required to comply fully with paragraph (2) (a) before the expiration of 12 months after the commencement of this Part, but shall, before that time, comply with that paragraph so far as is practicable. 15

(4) This section does not require a document of the kind referred to in sub-section (1) containing exempt matter to be made available in accordance with sub-section (2), but, if such a document is not so made available, the principal officer of the agency shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt matter, and cause the document so prepared to be dealt with in accordance with sub-section (2). 20

(5) The Minister may, by writing under his hand, extend, in respect of an agency, the time specified in paragraph (2) (b) or sub-section (3) where he is satisfied, after consulting the responsible Minister of the agency, that it is reasonable to extend the time by reason of special circumstances applicable to the agency. 25

(6) Where the Minister is satisfied, after consulting the responsible Minister of the agency concerned, that the form or nature of the documents to which this section applies in respect of an agency that are in existence at the commencement of this Part, or of some of those documents, is such that complete compliance with this section in respect of those documents would impose on the agency such a workload as would unreasonably divert its resources from its other operations, the first-mentioned Minister may, by writing under his hand, direct that the application of this section in respect of the agency is to be subject to such modifications as he specifies, being modifications that, in his opinion, are reasonably required by reason of the circumstances referred to in this sub-section. 30 35 40

(7) The report of the Minister under section 58 in respect of a year shall include—

(a) particulars of any extensions of time made, or directions given, under this section by the Minister during that year; and

(b) a statement concerning compliance by agencies with the requirements of this section during that year.

(8) Sub-sections (2) and (3) apply in relation to an agency that comes into existence after the commencement of this Part as if the references in those sub-sections to the commencement of this Part were references to the day on which the agency comes into existence.

Unpublished documents not to prejudice public

9. (1) If a document required to be made available in accordance with section 8, being a document containing a rule, guideline or practice relating to a function of an agency, was not made available, or was not included in a statement in the *Gazette*, as referred to in that section, before the time at which a person did, or omitted to do, any act or thing relevant to the performance of that function in relation to him (whether or not the time allowed for publication of a statement in respect of the document had expired before that time), that person, if he was not aware of that rule, guideline or practice at that time, shall not be subjected to any prejudice by reason only of the application of that rule, guideline or practice in relation to the thing done or omitted to be done by him if he could lawfully have avoided that prejudice had he been aware of that rule, guideline or practice.

(2) The reference in sub-section (1) to the time at which a person did, or omitted to do, any act or thing relevant to the performance in relation to him of a function of an agency does not include a reference to a time earlier than—

(a) the expiration of the period of 12 months referred to in paragraph (2) (b) or, if that period has been extended in respect of the agency under sub-section (5), the expiration of the period as extended; or

(b) the expiration of the period of 12 months after the day on which the agency came into existence,

whichever is the later.

PART III—ACCESS TO DOCUMENTS

Right of access

10. Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to—

(a) a document of an agency, other than an exempt document; or

(b) an official document of a Minister, other than an exempt document.

Part not to apply to certain documents

11. (1) A person is not entitled to obtain access under this Part to—

(a) a document, or a copy of a document, to which sub-section 32 (1) of the *Archives Act* 1981 applies;

(b) a document that is open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge; or

(c) a document that is available for purchase by the public in accordance with arrangements made by an agency.

(2) A person is not entitled to obtain access under this Part to a document that became a document of an agency or an official document of a Minister before the date of commencement of this Part, except where access to the document by him is reasonably necessary to enable a proper understanding of a document of an agency or an official document of a Minister to which he has lawfully had access.

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Documents in certain institutions

12. (1) A document shall not be deemed to be a document of an agency for the purposes of this Act by reason of its being—

- (a) in the memorial collection within the meaning of the *Australian War Memorial Act* 1980;
- (b) in the collection of library material maintained by the National Library of Australia;
- (c) material included in the historical material in the possession of the Museum of Australia; or
- (d) in the custody of the Australian Archives (otherwise than as a document relating to the administration of the Australian Archives),

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if the document was placed in that collection, or in that custody, by or on behalf of a person (including a Minister or former Minister) other than an agency.

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(2) For the purposes of this Act, a document that has been placed in the custody of the Australian Archives, or in a collection referred to in sub-section (1), by an agency shall be deemed to be in the possession of that agency or, if that agency no longer exists, the agency to the functions of which the document is most closely related.

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(3) Notwithstanding sub-sections (1) and (2), records of a Royal Commission that are in the custody of the Australian Archives shall, for the purposes of this Act, be deemed to be documents of an agency and to be in the possession of the Department administered by the Minister administering the *Royal Commissions Act* 1902.

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(4) Nothing in this Act affects the provision of access to documents by the Australian Archives in accordance with the *Archives Act* 1981.

Access to documents apart from Act

13. Nothing in this Act is intended to prevent or discourage Ministers and agencies from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where they can properly do so or are required by law to do so.

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Requests for access

14. (1) A person who wishes to obtain access to a document of an agency or an official document of a Minister may make a request in writing to the agency or Minister for access to the document.

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(2) A request shall provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, as the case may be, to identify the document.

(3) Where a person—

- 5 (a) wishes to make a request to an agency; or
- (b) has made to an agency a request that does not comply with this section,

it is the duty of the agency to take reasonable steps to assist the person to make the request in a manner that complies with this section.

- 10 (4) Where a person has directed to an agency a request that should have been directed to another agency or to a Minister, it is the duty of the first-mentioned agency to take reasonable steps to assist the person to direct the request to the appropriate agency or Minister.

Transfer of requests

- 15 15. (1) Where a request is made to an agency for access to a document and—
 - (a) the document is not in the possession of that agency but is, to the knowledge of that agency, in the possession of another agency; or
 - 20 (b) the subject-matter of the document is more closely connected with the functions of another agency than with those of the agency to which the request is made,

the agency to which the request is made may, with the agreement of the other agency, transfer the request to the other agency.

(2) Where a request is made to an agency for access to a document that—

- 25 (a) originated with, or has been received from, a body which, or person who, is not an agency but would be an agency but for section 6, or regulations made under that section; and
- (b) is more closely connected with the functions of that body or person than with those of the agency to which the request is made,

30 the request shall be transferred to the Department corresponding to the Department of State administered by the Minister who administers the enactment by or under which the body or person is established, continued in existence or appointed.

(3) Where a request is made to an agency for access to a document that—

- 35 (a) originated in, or has been received from, another agency; and
- (b) is more closely connected with functions of the other agency in respect of which the other agency is exempt from the operation of this Act than with the functions of the agency to which the request is made,

the agency to which the request is made shall transfer the request to the other agency.

- 40 (4) Where a request is transferred to an agency in accordance with this section, the agency making the transfer shall inform the person making the request accordingly and, if it is necessary to do so in order to enable the other agency to deal with the request, send the document to the other agency.

(5) Where a request is transferred to an agency in accordance with this section, it shall be deemed to be a request made to that agency and received at the time at which it was originally received.

(6) In this section, "agency" includes a Minister.

Requests involving use of computers, &c.

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16. (1) Where—

(a) a request (including a request of the kind described in sub-section 23 (1)) is duly made to an agency;

(b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in documents of the agency; and

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(c) the agency could produce a written document containing the information in discrete form by—

(i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or

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(ii) the making of a transcript from a sound recording held in the agency,

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

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(2) An agency is not required to comply with sub-section (1) if compliance would interfere unreasonably with the operations of the agency.

Access to documents to be given on request

17. (1) Subject to this Act, where—

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(a) a request is duly made by a person to an agency or Minister for access to a document of the agency or an official document of the Minister; and

(b) any charge that, under the regulations, is required to be paid before access is granted has been paid,

the person shall be given access to the document in accordance with this Act.

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(2) An agency or Minister is not required by this Act to give access to a document at a time when the document is an exempt document.

Time within which formal requests to be decided

18 (1) If a request to an agency or Minister—

(a) is made in writing and is expressed to be made in pursuance of this Act;

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(b) specifies an address in Australia at which notices under this Act may be sent to the person making the request; and

(c) is sent by post to the agency or Minister, or delivered to an officer of the agency or a member of the staff of the Minister, at an address of

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the agency or of the Minister, as the case may be, that is, under the regulations, an address to which requests made in pursuance of this Act may be sent or delivered in accordance with this section,

5 the agency or Minister shall take all reasonable steps to enable the applicant to be notified of a decision on the request as soon as practicable but in any case not later than 60 days after the day on which the request is received by or on behalf of the agency or Minister.

10 (2) The regulations may make provision that sub-section (1) is to have effect as if a specified shorter period were substituted for the period of 60 days specified in that sub-section, and a provision so made has effect in relation to requests received by or on behalf of an agency or Minister while the provision is in force.

Forms of access

15 **19. (1)** Access to a document may be given to a person in one or more of the following forms:

- (a) a reasonable opportunity to inspect the document;
- (b) provision by the agency or Minister of a copy of the document;
- 20 (c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;
- (d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in
25 codified form, provision by the agency or Minister of a written transcript of the words recorded or contained in the document.

(2) Subject to sub-section (3) and to section 21, where the applicant has requested access in a particular form, access shall be given in that form.

- 30 (3) If the giving of access in the form requested by the applicant—
- (a) would interfere unreasonably with the operations of the agency, or the performance by the Minister of his functions, as the case may be;
 - (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate; or
 - 35 (c) would, but for this Act, involve an infringement of copyright (other than copyright owned by the Commonwealth) subsisting in matter contained in the document, being matter that does not relate to the affairs of an agency or of a Department of State,

access in that form may be refused and access given in another form.

40 **Deferment of access**

20. (1) An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned until the happening of a

particular event (including the taking of some action required by law or some administrative action), or until the expiration of a specified time, where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices.

(2) Where the provision of access to a document is deferred in accordance with sub-section (1), the agency or Minister shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate. 5

(3) Where an agency or Minister has made a decision that access is to be granted to a document in pursuance of this Act, the responsible Minister of the agency, or the Minister who made the decision, as the case may be, may, by writing under his hand, direct that the access be deferred until a copy of the document has been laid before a House of the Parliament, but a direction so given ceases to have effect if, at the expiration of 5 sitting days of either House of the Parliament after the day on which the direction was given, the document has not been laid before either House of the Parliament. 10 15

(4) Sub-section 45 (1) does not apply in relation to a deferment under sub-section (3) of this section.

Deletion of exempt matter

21. (1) Where— 20

- (a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document;
- (b) it is possible for the agency or Minister to make a copy of the document with such deletions that the copy would not be an exempt document and would not, by reason of the deletions, be misleading; and 25
- (c) it is reasonably practicable for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy,

the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy. 30

(2) Where access is granted to a copy of a document in accordance with sub-section (1)— 35

- (a) the applicant shall be informed that it is such a copy and also informed of the provision of this Act by virtue of which any matter deleted is exempt matter; and
- (b) section 25 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant requests the agency or Minister to furnish to him a notice in writing in accordance with that section. 40

Decisions to be made by authorized persons

22 A decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.

Requests may be refused in certain cases**23. (1) Where—**

(a) a request is expressed to relate to all documents, or to all documents of a specified class, that contain information of a specified kind or relate to a specified subject-matter; and

(b) the agency or Minister dealing with the request is satisfied that, apart from this sub-section, the work involved in giving access to all the documents to which the request relates would unreasonably divert the resources of the agency from its other operations or would interfere unreasonably with the performance by the Minister of his functions, as the case may be, having regard to the number and volume of the documents and to any difficulty that would exist in identifying, locating or collating the documents within the filing system of the agency or of the office of the Minister,

the agency or Minister may refuse to grant access to the documents in accordance with the request without having caused those processes to be undertaken.

(2) An agency or Minister may refuse to grant access to documents in accordance with a request without having searched for or identified the documents if the nature of the documents, as described in the request, is such that any such document would be an exempt document.

(3) Where the agency or Minister dealing with a request in respect of which sub-section (2) is, apart from this sub-section, applicable has reason to believe that—

(a) there is or may be a document to which the request relates that contains other matter in addition to exempt matter;

(b) it would be practicable to grant access to a copy of the document with such deletions as to make the copy not an exempt document; and

(c) the applicant would wish to have access to such a copy, that sub-section does not apply in relation to that document.

(4) An agency or Minister shall not refuse to grant access to a document in accordance with a request—

(a) on the ground that the request does not comply with sub-section 14 (2); or

(b) in accordance with sub-section (1), without first giving the applicant a reasonable opportunity of consultation with a view to the making of the request in a form that would remove the ground for refusal.

Information as to existence of certain documents

24. (1) Nothing in this Act shall be taken to require an agency or Minister to give information as to the existence or non-existence of a document where information as to the existence or non-existence of that document, if included in a document of an agency, would cause the last-mentioned document to be an exempt document by virtue of section 28 or sub-section 32 (1). 5

(2) Where a request relates to a document that is, or if it existed would be, of a kind referred to in sub-section (1), the agency or Minister dealing with the request may give notice in writing to the applicant that the agency or the Minister, as the case may be, neither confirms nor denies the existence, as a document of the agency or an official document of the Minister, of such a document but that, assuming the existence of such a document, it would be an exempt document and, where such a notice is given— 10

(a) section 25 applies as if the decision to give such a notice were a decision referred to in that section; and 15

(b) the decision shall, for the purposes of Part V, be deemed to be a decision refusing to grant access to the document in accordance with the request.

Reasons and other particulars of decisions to be given

25. (1) Where, in relation to a request, a decision is made under this Part refusing to grant access to a document in accordance with the request or deferring provision of access to a document, the agency or Minister concerned shall cause the applicant to be given notice in writing of the decision, and the notice shall— 20

(a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; 25

(b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and

(c) give to the applicant appropriate information concerning his rights with respect to review of the decision and the procedure for the exercise of those rights, including (where applicable) particulars of the manner in which an application for a review under section 44 may be made. 30

(2) An agency or Minister is not required to include in a notice under this section any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document. 35

Procedure on request in respect of document relating to business affairs, &c.

26. (1) Where—

(a) a request is received by an agency or Minister in respect of a document containing information concerning a person in respect of his business or professional affairs or concerning the business, commercial or financial affairs of an organization or undertaking; and 40

(b) it appears to the officer or Minister dealing with the request, or to a person reviewing under section 44 a decision refusing the request,

that the person or organization, or the proprietor of the undertaking, referred to in paragraph (a) might reasonably wish to contend that the document is an exempt document under section 38,

5 a decision to grant access under this Act to the document, so far as it contains the information referred to in paragraph (a), shall not be made unless, where it is reasonably practicable to do so having regard to all the circumstances, including the application of section 18—

10 (c) the agency or Minister has given to that person or organization or the proprietor of that undertaking a reasonable opportunity of making submissions in support of a contention that the document is an exempt document under section 38; and

(d) the person making the decision has had regard to any submissions so made.

15 (2) Where, after any submissions have been made in accordance with subsection (1), a decision is made that the document, so far as it contains the information referred to in paragraph (1) (a), is not an exempt document under section 38—

20 (a) the agency or Minister shall cause notice in writing of the decision to be given to the person who made the submissions, as well as to the person who made the request; and

(b) access shall not be given to the document, so far as it contains the information referred to in paragraph (1) (a), unless—

25 (i) the time for an application to the Tribunal by that person in accordance with section 49 has expired and such an application has not been made; or

(ii) such an application has been made and the Tribunal has confirmed the decision.

PART IV—EXEMPT DOCUMENTS

Interpretation

30 27. A provision of this Part by virtue of which documents referred to in the provision are exempt documents—

(a) shall not be construed as limited in its scope or operation in any way by any other provision of this Part by virtue of which documents are exempt documents; and

35 (b) shall not be construed as not applying to a particular document by reason that another provision of this Part of a kind mentioned in paragraph (a) also applies to that document.

Documents affecting national security, defence, international relations and relations with States

40 28. (1) A document is an exempt document if disclosure of the document under this Act would be contrary to the public interest for the reason that the disclosure—

(a) could reasonably be expected to cause damage to—

(i) the security of the Commonwealth;

- (ii) the defence of the Commonwealth;
- (iii) the international relations of the Commonwealth; or
- (iv) relations between the Commonwealth and any State or the Northern Territory; or

(b) would divulge any information or matter communicated in confidence by or on behalf of the Government of another country, or of a State or the Northern Territory, to the Government of the Commonwealth or a person receiving the communication on behalf of that Government. 5

(2) Where a Minister is satisfied that the disclosure under this Act of a document would be contrary to the public interest for a reason referred to in sub-section (1), he may sign a certificate to that effect (specifying that reason) and such a certificate, so long as it remains in force, establishes conclusively that the document is an exempt document referred to in sub-section (1). 10

(3) Where a Minister is satisfied as mentioned in sub-section (2) by reason only of matter contained in a particular part or particular parts of a document, a certificate under that sub-section in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given. 15

(4) Where a Minister is satisfied that information as to the existence or non-existence of a document would, if contained in a document of an agency, cause the disclosure under this Act of the last-mentioned document to be contrary to the public interest for a reason referred to in sub-section (1), he may sign a certificate to that effect (specifying that reason). 20

(5) The responsible Minister of an agency may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the principal officer of the agency his powers under this section in respect of documents of the agency. 25

(6) A power delegated under sub-section (5), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the responsible Minister. 30

(7) A delegation under sub-section (5) does not prevent the exercise of a power by the responsible Minister.

Cabinet documents

29. (1) A document is an exempt document if it is—

(a) a document that has been submitted to the Cabinet for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Cabinet; 35

(b) an official record of the Cabinet;

(c) a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or 40

(d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.

5 (2) For the purposes of this Act, a certificate signed by the Secretary to the Department of the Prime Minister and Cabinet certifying that a document is one of a kind referred to in a paragraph of sub-section (1) establishes conclusively that it is an exempt document of that kind.

10 (3) Where a document is a document referred to in paragraph (1) (c) or (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under sub-section (2) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

15 (4) For the purposes of this Act, a certificate signed by the Secretary to the Department of the Prime Minister and Cabinet certifying that a document as described in a request would, if it existed, be one of a kind referred to in a paragraph of sub-section (1) establishes conclusively that, if such a document exists, it is an exempt document of that kind.

20 (5) Where a certificate in accordance with sub-section (4) has been signed in respect of a document as described in a request, the decision on the request may be a decision that access to a document as described in the request is refused on the ground that, if such a document existed, it would be an exempt document referred to in the paragraph of sub-section (1) that is specified in the certificate.

25 (6) A reference in this section to the Cabinet shall be read as including a reference to a committee of the Cabinet.

Executive Council documents

30 30. (1) A document is an exempt document if it is—

(a) a document that has been submitted to the Executive Council for its consideration or is proposed by a Minister to be so submitted being a document that was brought into existence for the purpose of submission for consideration by the Executive Council;

(b) an official record of the Executive Council;

(c) a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or

35 (d) a document the disclosure of which would involve the disclosure of any deliberation or advice of the Executive Council, other than a document by which an act of the Governor-General, acting with the advice of the Executive Council, was officially published.

40 (2) For the purposes of this Act, a certificate signed by the Secretary to the Executive Council, or a person performing the duties of the Secretary, certifying that a document is one of a kind referred to in a paragraph of sub-section (1) establishes conclusively that it is an exempt document of that kind.

(3) Where a document is a document referred to in paragraph (1) (c) or (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under sub-section (2) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given. 5

(4) For the purposes of this Act, a certificate signed by the Secretary to the Executive Council, or a person performing the duties of the Secretary, certifying that a document as described in a request would, if it existed, be one of a kind referred to in a paragraph of sub-section (1) establishes conclusively that, if such a document exists, it is an exempt document of that kind. 10

(5) Where a certificate in accordance with sub-section (4) has been signed in respect of a document as described in a request, the decision on the request may be a decision that access to a document as described in the request is refused on the ground that, if such a document existed, it would be an exempt document referred to in the paragraph of sub-section (1) that is specified in the certificate. 15

Internal working documents

31. (1) Subject to this section, a document is an exempt document if it is a document the disclosure of which under this Act—

- (a) would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Government of the Commonwealth; and 20
- (b) would be contrary to the public interest. 25

(2) In the case of a document of the kind referred to in sub-section 8 (1), the matter referred to in paragraph (1) (a) of this section does not include matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in sub-section 8 (1).

(3) This section does not apply to a document by reason only of purely factual material contained in the document. 30

(4) This section does not apply to—

- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters; 35
- (b) reports of a prescribed body or organization established within an agency; or
- (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function. 40

(5) Where a decision is made under Part III that an applicant is not entitled to access to a document by reason of the application of this section, the notice under section 25 shall state the ground of public interest on which the decision is based.

Documents affecting enforcement of the law and protection of public safety

32. (1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—

- 5 (a) prejudice the conduct of an investigation of an offence, or possible offence, against the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;
- 10 (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of the law; or
- (c) endanger the lives or physical safety of persons engaged in or in connection with law enforcement.

(2) A document is an exempt document if its disclosure under this Act, would, or could reasonably be expected to—

- 15 (a) prejudice the carrying on generally of investigations concerning breaches or evasions of the law;
- (b) prejudice the fair trial of a person or the impartial adjudication of a particular case;
- 20 (c) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which, would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
- 25 (d) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

(3) In sub-sections (1) and (2), “law” means law of the Commonwealth or of a State or Territory.

Documents to which secrecy provisions of enactments apply

33. A document is an exempt document if there is in force an enactment applying specifically to information of a kind contained in the document and prohibiting persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

Documents affecting financial or property interests of the Commonwealth

34. A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that the disclosure would have a substantial adverse effect on the financial or property interests of the Commonwealth or of an agency.

Documents concerning certain operations of agencies

35. A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that—

- (a) the document contains information relating to—
 - (i) procedures or methods for the conduct of tests, examinations or audits by an agency; or 5
 - (ii) particular tests, examinations or audits conducted or to be conducted by an agency,
 - the disclosure of which would, or could reasonably be expected to, prejudice the effectiveness of those procedures or methods or the attainment of the objects of any such tests, examinations or audits; 10
- (b) the document contains information the disclosure of which would, or could reasonably be expected to, have a substantial adverse effect on the supervision or review of the operations of an agency for the purpose of ensuring the proper and efficient conduct of those operations; or 15
- (c) the document contains information the disclosure of which would, or could reasonably be expected to, have a substantial adverse effect on the staff management interests of the Commonwealth or of an agency, including the development and carrying out of the personnel management policy and the industrial relations policy of the Commonwealth or of an agency or the conduct by or on behalf of the Commonwealth or an agency of industrial relations negotiations. 20

Documents affecting personal privacy

36. (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person). 25

(2) Subject to sub-section (3), the provisions of sub-section (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

(3) Where a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information of a medical or psychiatric nature concerning the person making the request and it appears to the principal officer of the agency, or to the Minister, as the case may be, that the disclosure of the information to that person might be prejudicial to the physical or mental health or well-being of that person, the principal officer or Minister may direct that access to the document, so far as it contains that information, that would otherwise be given to that person is not to be given to him but is to be given instead to a medical practitioner to be nominated by him. 30 35

Documents affecting legal proceedings or subject to legal professional privilege 40

37. (1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to, have a substantial adverse effect on the interests of the Commonwealth or of an agency in or in relation to pending or likely legal proceedings.

(2) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

5 (3) A document of the kind referred to in sub-section 8 (1) is not an exempt document by virtue of sub-section (2) of this section by reason only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in sub-section 8 (1).

Documents relating to business affairs, &c.

10 38. (1) A document is an exempt document if its disclosure under this Act would disclose—

- (a) trade secrets;
- (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
- 15 (c) information (other than trade secrets or information to which paragraph (b) applies) concerning a person in respect of his business or professional affairs or concerning the business, commercial or financial affairs of an organization or undertaking, being information—
 - 20 (i) the disclosure of which would, or could reasonably be expected to, affect that person adversely in respect of his lawful business or professional affairs or that organization or undertaking in respect of its lawful business, commercial or financial affairs; or
 - 25 (ii) the disclosure of which under this Act could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

(2) The provisions of sub-section (1) do not have effect in relation to a request by a person for access to a document—

- 30 (a) by reason only of the inclusion in the document of information concerning that person in respect of his business or professional affairs;
- (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
- 35 (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organization where the person making the request is the organization or a person acting on behalf of the organization.

40 (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, a State, the Northern Territory or a local government authority.

Documents affecting national economy

39. (1) A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that it—

- (a) would, or could reasonably be expected to, have a substantial adverse effect on the ability of the Government of the Commonwealth to manage the economy of Australia; or 5
- (b) could reasonably be expected to result in an undue disturbance of the ordinary course of business in the community, or an undue benefit or detriment to any person or class of persons, by reason of giving premature knowledge of or concerning proposed or possible action or inaction of the Government or Parliament of the Commonwealth. 10

(2) The kinds of documents to which sub-section (1) may apply include, but are not limited to, documents containing matter relating to—

- (a) currency or exchange rates; 15
- (b) interest rates; 15
- (c) taxes, including duties of customs or of excise;
- (d) the regulation or supervision of banking, insurance and other financial institutions;
- (e) proposals for expenditure;
- (f) foreign investment in Australia; or 20
- (g) borrowings by the Commonwealth, a State or an authority of the Commonwealth or of a State.

Documents containing material obtained in confidence

40. A document is an exempt document if its disclosure under this Act would constitute a breach of confidence. 25

Documents disclosure of which would be contempt of Parliament or contempt of court

41. A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown—

- (a) be in contempt of court; 30
- (b) be contrary to an order made or direction given by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath; or
- (c) infringe the privileges of the Parliament of the Commonwealth or of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory or of Norfolk Island. 35

Privileged documents

42. (1) Where the Attorney-General is of the opinion, in relation to a particular document, or in relation to any document included in a particular class of documents, that a ground exists on which a court would hold that it would be contrary to the public interest to order the discovery or production of the document, or of a document included in that class, in proceedings in the 40

court, he may sign a certificate that he is of that opinion, specifying the ground concerned, and, while such a certificate is in force, but subject to Part V, the document, or every document included in that class, as the case may be, is an exempt document.

- 5 **(2)** A certificate under sub-section (1) in relation to a particular document shall be deemed to refer also to every document that is substantially identical to that document.

Certain documents arising out of companies and securities legislation

10 **43. (1)** A document is an exempt document if it is, or is a copy of or of a part of, or contains an extract from—

- 15 (a) a document for the purposes of the Ministerial Council for Companies and Securities prepared by, or received by an agency or Minister from, a State or an authority of a State;
- 20 (b) a document the disclosure of which would disclose the deliberations or decisions of the Ministerial Council for Companies and Securities, other than a document by which a decision of that Council was officially published;
- 25 (c) a document furnished to the National Companies and Securities Commission by a State or an authority of a State and relating solely to the functions of the Commission in relation to the law of a State or the laws of 2 or more States; or
- (d) a document, other than a document referred to in paragraph (c), that is in the possession of the National Companies and Securities Commission and relates solely to the exercise of the functions of that Commission under a law of a State or the laws of 2 or more States.

- (2)** This section has effect as if the Northern Territory were a State.

PART V—REVIEW OF DECISIONS

Internal review

30 **44. (1)** Where a decision has been made, in relation to a request to an agency, otherwise than by the responsible Minister or principal officer of the agency, the applicant may, within 28 days after the date on which notice of the decision was given to the applicant in accordance with section 25 or within such further period as the principal officer of the agency allows, apply to the principal officer of the agency for a review of the decision in accordance with this section.

35 **(2)** Subject to sub-section (3), where an application for a review of a decision is made to the principal officer in accordance with sub-section (1), he shall forthwith arrange for himself or a person (not being the person who made the decision) authorized by him to conduct such reviews to review the decision and make a fresh decision on the original application.

40 **(3)** Sub-section (1) does not apply in relation to—

- (a) a decision made on a review under this section; or

(b) a decision that is, under sub-section 46 (1) or (3), to be deemed to have been given.

(4) The provisions of section 25 extend to a decision under this section.

Applications to Administrative Appeals Tribunal

45. (1) Subject to this section, an application may be made to the Administrative Appeals Tribunal for review of— 5

- (a) a decision refusing to grant access to a document in accordance with a request or deferring the provision of access to a document; or
- (b) a decision refusing to allow a further period for making an application under sub-section 44 (1) for a review of a decision. 10

(2) Subject to sub-section (3), where, in relation to a decision referred to in paragraph (1) (a), a person is or has been entitled to apply under section 44 for a review of the decision, that person is not entitled to make an application under sub-section (1) in relation to that decision, but may make such an application in respect of the decision made on such a review. 15

(3) Sub-section (2) does not prevent an application to the Tribunal in respect of a decision where—

- (a) the person concerned has applied under section 44 for a review of the decision;
- (b) a period of 14 days has elapsed since the day on which he made that application; and 20
- (c) he has not been informed of the result of the review,

and such an application to the Tribunal may be treated by the Tribunal as having been made within the time allowed by sub-section (4) if it appears to the Tribunal that there was no unreasonable delay in making the application to the Tribunal. 25

(4) Notwithstanding section 29 of the *Administrative Appeals Tribunal Act* 1975, the period within which (subject to any extension granted by the Tribunal) an application under sub-section (1) of this section is to be made in respect of a decision is— 30

- (a) except where paragraph (b) or (c) applies—the period commencing on the day on which notice of the decision was given to the applicant in accordance with section 25 and ending on the sixtieth day after that day;
- (b) where the decision is a decision that is to be deemed by sub-section 46 (1) or (3) to have been made—the period commencing on the day on which the decision is to be deemed to have been made and ending on the sixtieth day after that day; or 35
- (c) where sub-section 47 (2) is applicable—the period commencing on the day on which the Ombudsman has informed the applicant as referred to in that sub-section and ending on the sixtieth day after that day. 40

Application to Tribunal where decision delayed

46. (1) Subject to this section, where—

(a) a request has been made to an agency or Minister in accordance with section 18;

(b) the period of 60 days or such other period as is applicable by virtue of regulations under sub-section 18 (2) has elapsed since the day on which the request was received by or on behalf of the agency or Minister; and

(c) notice of a decision on the request has not been received by the applicant, the principal officer of the agency or the Minister shall, for the purpose of enabling an application to be made to the Tribunal under section 45, be deemed to have made, on the last day of that period, a decision refusing to grant access to the document.

(2) Where a complaint is made to the Ombudsman under the *Ombudsman Act 1976* concerning failure to make and notify to the applicant a decision on a request (whether the complaint was made before or after the expiration of the period referred to in sub-section (1)), an application to the Tribunal under section 45 of this Act by virtue of this section shall not be made before the Ombudsman has informed the applicant of the result of the complaint in accordance with section 12 of the *Ombudsman Act 1976*.

(3) Where such a complaint is made before the expiration of the period referred to in sub-section (1), the Ombudsman, after having investigated the complaint, may, if he is of the opinion that there has been unreasonable delay by an agency in connection with the request, grant to the applicant a certificate certifying that he is of that opinion, and, if the Ombudsman does so, the principal officer of the agency or the Minister, as the case requires, shall, for the purpose of enabling application to be made to the Tribunal under section 45, be deemed to have made, on the day on which the certificate is granted, a decision refusing to grant access to the document.

(4) The Ombudsman shall not grant a certificate under sub-section (3) where the request to which the complaint relates was made to, or has been referred to, a Minister and is awaiting decision by him.

(5) Where, after an application has been made to the Tribunal by virtue of this section but before the Tribunal has finally dealt with the application, a decision, other than a decision to grant, without deferment, access to the document in accordance with the request, is given, the Tribunal may, at the request of the applicant, treat the proceedings as extending to a review of that decision in accordance with this Part.

(6) Before dealing further with an application made by virtue of this section, the Tribunal may, on the application of the agency or Minister concerned, allow further time to the agency or Minister to deal with the request.

Complaints to Ombudsman

47. (1) Notwithstanding anything contained in this Act or in sub-section 6 (3) of the *Ombudsman Act 1976* but subject to sub-section 6 (2) of that Act,

the exercise of the powers of the Ombudsman under the *Ombudsman Act 1976* in respect of matters arising under this Act is not precluded or restricted by reason of the rights conferred on persons by this Act to make applications to the Tribunal.

(2) Where a complaint is made to the Ombudsman under the *Ombudsman Act 1976* concerning a decision under this Act, an application to the Tribunal for a review of the decision shall not be made before the Ombudsman has informed the applicant of the result of the complaint in accordance with section 12 of the *Ombudsman Act 1976*. 5

(3) Notwithstanding anything contained in the *Ombudsman Act 1976*, a report under that Act to a complainant in respect of a complaint arising out of a request under this Act shall not contain information of the kind referred to in sub-section 24 (1) of this Act. 10

Powers of Tribunal

48. (1) Subject to sub-section (2), in proceedings under this Part, the Tribunal has power, in addition to any other power, to review any decision that has been made by an agency or Minister in respect of the request and any decision of the Attorney-General to give a certificate under section 42 that is applicable to the document and to decide any matter in relation to the request that, under this Act, could have been or could be decided by an agency or Minister, and any decision of the Tribunal under this section has the same effect as a decision of the agency or Minister. 15 20

(2) Where, in proceedings under this section, it is established that a document is an exempt document, the Tribunal does not have power to decide that access to the document, so far as it contains exempt matter, is to be granted. 25

(3) The powers of the Tribunal do not extend to reviewing a decision of an agency or Minister, for the purposes of sub-section 31 (1), that the disclosure of a document would be contrary to the public interest.

(4) Where, under a provision of Part IV, it is provided that a certificate of a specified kind establishes conclusively, for the purposes of this Act, that a document is, or if it exists is, an exempt document and such a certificate has been given, the powers of the Tribunal do not extend to reviewing the decision to give the certificate or the existence of proper grounds for the giving of the certificate. 30 35

(5) Where a certificate has been given under sub-section 28 (4), the powers of the Tribunal do not extend to reviewing the decision to give the certificate or the existence of proper grounds for the giving of the certificate.

(6) The powers of the Tribunal under this section extend to matters relating to charges payable under this Act in relation to a request. 40

(7) For the purpose of reviewing a decision of the Attorney-General to give a certificate under section 42, the Tribunal shall be constituted by the President or a Deputy President of the Tribunal alone.

Review of certain decisions in respect of documents relating to business affairs, &c.

5 49. (1) Where notice of a decision that a document, so far as it contains certain information, is not an exempt document under section 38 has been given, in accordance with sub-section 26 (2), to a person who made submissions in accordance with that section, that person may apply to the Tribunal for a review of that decision.

(2) Where an application is made in accordance with sub-section (1)—

- 10 (a) the provisions of this Part (other than sections 45 and 51) apply in like manner as they apply in relation to an application for review of a decision refusing to grant access to a document; and
(b) the agency or Minister concerned shall forthwith inform the person who made the request of the application.

(3) Where—

- 15 (a) upon a request referred to in sub-section 26 (1), a decision is made, after the making of submissions by a person in accordance with that sub-section, not to grant access to the document to which the request relates, so far as it contains the information referred to in paragraph 26 (1) (a); and
20 (b) an application is made to the Tribunal for a review of the decision, the agency or Minister concerned shall forthwith inform the person who made the submissions of the application.

Parties

25 50. For the purposes of this Part and of the application of the *Administrative Appeals Tribunal Act 1975* in respect of proceedings under this Part—

- (a) a decision given by a person on behalf of an agency shall be deemed to have been given by the agency; and
30 (b) in the case of proceedings by virtue of section 46, the agency or Minister to which or to whom the request was made shall be a party to the proceedings.

Onus

35 51. In proceedings under this Part, the agency or Minister to which or to whom the request was made has the onus of establishing that a decision given in respect of the request was justified or that the Tribunal should give a decision adverse to the applicant.

Application of section 28 of Administrative Appeals Tribunal Act

52. Where, in relation to a decision in respect of a request, the applicant has been given a notice in writing complying with section 25, section 28 of the *Administrative Appeals Tribunal Act 1975* does not apply to that decision.

Tribunal to ensure non-disclosure of certain matters

53. (1) In proceedings under this Part, the Tribunal shall make such order or orders under sub-section 35 (2) of the *Administrative Appeals Tribunal Act 1975* as it thinks necessary having regard to the nature of the proceedings and, in particular, to the necessity of avoiding the disclosure to the applicant of— 5

- (a) exempt matter contained in a document to which the proceedings relate; or
- (b) information of the kind referred to in sub-section 24 (1).

(2) Notwithstanding anything contained in the *Administrative Appeals Tribunal Act 1975*— 10

- (a) the Tribunal shall not, in its reasons for a decision in a matter arising under this Act, include any matter or information of a kind referred to in sub-section (1); and
- (b) the Tribunal may receive evidence, or hear argument, in the absence of the applicant or his representative where it is necessary to do so in order to prevent the disclosure to the applicant of matter or information of a kind referred to in sub-section (1). 15

Production of exempt documents

54. (1) Where there are proceedings before the Tribunal under this Act in relation to a document that is claimed to be an exempt document, section 37 of the *Administrative Appeals Tribunal Act 1975* does not apply in relation to the document but if the Tribunal is not satisfied, by evidence on affidavit or otherwise— 20

- (a) that the document is an exempt document; and
- (b) in the case of a document that is an exempt document by virtue of a certificate of the Attorney-General under section 42, that the giving of the certificate was justified, 25

it may require the document to be produced for inspection by members of the Tribunal only and if, upon the inspection, the Tribunal is satisfied that the document is an exempt document and, in the case of a document referred to in paragraph (b), that the giving of the certificate was justified, the Tribunal shall return the document to the person by whom it was produced without permitting any person other than a member of the Tribunal as constituted for the purposes of the proceeding, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, to have access to the document or disclosing the contents of the document to any such person. 30 35

(2) The Tribunal may require the production, for inspection by members of the Tribunal only, of an exempt document for the purpose of determining whether it is practicable for an agency or a Minister to grant access to a copy of the document with such deletions as to make the copy not an exempt document and, where an exempt document is produced by reason of such a requirement, the Tribunal shall, after inspection of the document by the members of the Tribunal as constituted for the purposes of the proceeding, return the document to the person by whom it was produced without permitting any 40

person other than such a member of the Tribunal, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, to have access to the document or disclosing the contents of the document to any such person.

5 (3) Notwithstanding sub-sections (1) and (2) but subject to sub-section (4), the Tribunal is not empowered, in any proceedings, to require—

(a) the production of a document in respect of which there is in force a certificate under section 28, 29 or 30; or

10 (b) the giving of information in respect of which a certificate is in force under sub-section 28 (4).

(4) Where a certificate of a kind referred to in paragraph (3) (a) identifies a part or parts of the document concerned in the manner provided in sub-section 28 (3), 29 (3) or 30 (3), sub-section (3) does not prevent the Tribunal from requiring the production, in proceedings before the Tribunal under this Act in relation to the document, of a copy of so much of the document as is not
15 included in the part or parts so identified.

(5) Sub-sections (1) and (2) apply in relation to a document in the possession of a Minister that is claimed by the Minister not to be an official document of the Minister as if references in those sub-sections to an exempt document were references to a document in the possession of a Minister that is not an
20 official document of the Minister.

(6) Sub-section (1) or (2) does not operate so as to prevent the Tribunal from causing a document produced in accordance with that sub-section to be sent to the Federal Court of Australia in accordance with section 46 of the
25 *Administrative Appeals Tribunal Act 1975*, but, where such a document is so sent to the Court, the Court shall do all things necessary to ensure that the contents of the document are not disclosed (otherwise than in accordance with this Act) to any person other than a member of the Court as constituted for the purpose of the proceeding before the Court or a member of the staff
30 of the Court in the course of the performance of his duties as a member of that staff.

Evidence of certificates

55. In proceedings before the Tribunal under this Part, evidence of a certificate under section 28, 29 or 30, including evidence of the identity or
35 nature of a document to which the certificate relates, may be given by affidavit or otherwise and such evidence is admissible without production of the certificate or of a document to which it relates.

PART VI—MISCELLANEOUS

Protection against certain actions

40 56. (1) Where access has been given to a document and—

(a) the access was required by this Act to be given; or

- (b) the access was authorized by a Minister, or by an officer having authority, in accordance with section 22 or 44, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given,

no action for defamation, breach of confidence or infringement of copyright lies against the Commonwealth, an agency, a Minister or an officer by reason of the authorizing or giving of the access, and no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of the access lies against the author of the document or any other person by reason of that author or other person having supplied the document to an agency or Minister. 5 10

(2) The giving of access to a document (including an exempt document) in consequence of a request shall not be taken, for the purposes of the law relating to defamation or breach of confidence, to constitute an authorization or approval of the publication of the document or of its contents by the person to whom the access was given. 15

Protection in respect of offences

57 Where access has been given to a document and—

- (a) the access was required by this Act to be given; or
 (b) the access was authorized by a Minister, or by an officer having authority, in accordance with section 22 or 44, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given, 20

neither the person authorizing the access nor any person concerned in the giving of the access is guilty of a criminal offence by reason only of the authorizing or giving of the access. 25

Reports to Parliament

58. (1) The Minister shall, as soon as practicable after the end of each year ending on 30 June, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before each House of the Parliament. 30

(2) Each agency shall, in relation to the agency, and each Minister shall, in relation to his official documents, furnish to the Minister administering this Act such information as he requires for the purposes of the preparation of reports under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section. 35

Regulations

59 (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act 40

to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, making provision for or in relation to—

- 5 (a) the making of charges of amounts, or at rates, fixed by or in accordance with the regulations in respect of requests for access to documents or in respect of the provision of access to documents (including the provision of copies or transcripts) in accordance with this Act, including requiring deposits on account of such charges; and
- (b) the officers who may give decisions on behalf of an agency.

10 (2) Where, as a result of a request, access is given to an exempt document, regulations under this Act relating to charges apply as if the access had been given in accordance with this Act.

SCHEDULE

Section 6

PART I*Exempt agencies*

Aboriginal Land Councils and Land Trusts
Auditor-General
Australian Industry Development Corporation
Australian National Airlines Commission
Australian National Railways Commission
Australian Overseas Projects Corporation
Australian Secret Intelligence Service
Australian Security Intelligence Organisation
Australian Shipping Commission
Canberra Commercial Development Authority
Commonwealth Banking Corporation; Commonwealth Trading Bank; Commonwealth Savings Bank; Commonwealth Development Bank
Commonwealth Serum Laboratories Commission
Export Finance and Insurance Corporation
Health Insurance Commission
Housing Loans Insurance Corporation
National Debt Commission
National Labour Consultative Council
Office of National Assessments
Pipeline Authority
Snowy Mountains Engineering Corporation
Superannuation Fund Investment Trust

PART II*Agencies exempt in respect of particular documents*

Albury-Wodonga Development Corporation, in relation to documents in respect of its competitive commercial activities
Australian Apple and Pear Corporation, in relation to documents in respect of its competitive commercial activities
Australian Broadcasting Commission, in relation to its program material
Australian Canned Fruits Corporation, in relation to documents in respect of its competitive commercial activities
Australian Dairy Corporation, in relation to documents in respect of its competitive commercial activities
Australian Dried Fruits Corporation, in relation to documents in respect of its competitive commercial activities
Australian Egg Board, in relation to documents in respect of its competitive commercial activities
Australian Honey Board, in relation to documents in respect of its competitive commercial activities
Australian Meat and Livestock Corporation, in relation to documents in respect of its competitive commercial activities
Australian Postal Commission, in relation to documents in respect of its competitive commercial activities
Australian Telecommunications Commission, in relation to documents in respect of its competitive commercial activities
Australian Wheat Board, in relation to documents in respect of its competitive commercial activities
Australian Wine and Brandy Corporation, in relation to documents in respect of its competitive commercial activities
Australian Wool Corporation, in relation to documents in respect of its competitive commercial activities
Department of Defence, in relation to documents in respect of activities of the Defence Signals Directorate and the Joint Intelligence Organization
Department of the Treasury, in relation to documents in respect of activities of the Australian Loan Council and in respect of the competitive commercial activities of the Royal Australian Mint
Overseas Telecommunications Commission, in relation to documents in respect of its competitive commercial activities

Reserve Bank of Australia, in relation to documents in respect of its banking operations (including individual open market operations and foreign exchange dealings) and in respect of exchange control matters
Special Broadcasting Service, in relation to its program material

